

Gainful Employment: Preparing a Public Comment

May 31, 2023



Overview of NPRM

(1) Certification Procedures

(2) Ability to Benefit

(3) Gainful Employment and Financial Value Transparency

- Financial Value Transparency (no Title IV consequences)
- Gainful Employment (Title IV consequences)

(4) Administrative Capability

(5) Financial Responsibility



Overview of NPRM

- NPRM references “cosmetology program” over 50 times
- GE Metrics:
 - Debt-to-Earnings Rate (“D/E rate”)
 - Failure to account for underreporting in earnings
 - Removal of Alternate Earnings Appeals
 - Earnings Premium Measure (“EP”)
- Public Comment Period – **Deadline is June 20, 2023**
 - **VIA REGULATIONS.GOV**
 - **Re: Docket ID ED-2023-OPE-0089**



GE & FVT Timing and Effective Enforcement

- Publication by November 1, 2023 results in effective date of July 1, 2024
- Transitional certification of GE program compliance with GE Rule required by Dec. 31, 2024
- Department Statement: “We believe institutions will have had sufficient time to take any internal actions necessary to comply with final regulations.”
- **2024-2025:** First Year of Gainful Employment Rates
- **2025-2026:** Second Year of Gainful Employment Rates
- **2026-2027:** Third Year of Gainful Employment Rates



Important Resources

- **Notice of Proposed Rulemaking (5-19-2023):**
<https://www.federalregister.gov/documents/2023/05/19/2023-09647/financial-value-transparency-and-gainful-employment-ge-financial-responsibility-administrative>
- **ED Release of version of the data that was used to model the effects of the proposed gainful employment and financial transparency rules in the Regulatory Impact Analysis:**
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>



Important Resources

- **ED Press Release:** <https://www.ed.gov/news/press-releases/departments-education-releases-proposed-rules-accountability-certificate-and-profit-programs-and-transparency-unaffordable-student-debt>
- **ED GE and Transparency Fact Sheet:**
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/gainful-employment-and-transparency-fact-sheet.pdf>
- **ED Fact Sheet on Admin Capability/Fin Responsibility/Certification/ATB:**
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/fact-sheet-for-other-may2023-nprm-issues.pdf>



GE D/E Rates – AACCS Opposition

- Underreporting of Income + Elimination of Alternate Earnings Appeal
 - Department Rationale:
 - Acknowledging underreporting would be harmful to taxpayers resulting in increasing public subsidies of such programs
 - Would not result in more accurate earnings
 - Would not result in schools satisfying metric
 - Contrary to legal reporting requirements (will encourage under-reporting behavior)
 - Will assist institutions in “gaming” earnings data
 - AACCS Opposition: Without mechanisms in place to account for flawed earnings data, the D/E Rate fails to accurately serve its purpose of ensuring programs lead to gainful employment
 - AACCS v. DeVos: Department violated APA by failing to address issue of unreported income
 - Entrepreneurs and underreporting
 - Flexible work hours to supplement family income
 - AACCS v. DeVos: Ordered removal of barriers to appeal to uphold legality of rule
 - NPRM removal of Appeal is illegal



GE Earnings Premium – AACCS Opposition

- Department Rationale:
 - D/E rate alone is not sufficient to ensure that program is leading to gainful employment
 - High default rate among students in programs that satisfy D/E thresholds but fail EP
- AACCS Opposition: Metric Based Solely on Earnings is Flawed, Undeveloped and Arbitrary
 - Up to 66% of cosmetology programs will fail measure, lose Title IV eligibility and likely shut down (not accounting for programs that do not have EP data)
 - Basing comparison of program graduate v. high school graduate for age purposes is flawed mechanism
 - Cosmetology graduate measured three years after completion fails to capture average earnings in profession and earning trajectories
 - AACCS Member default rates are low to average
 - Comparative options have higher default rates



What is AACCS Doing?

AACS is preparing a detailed, master Public Comment on behalf of all AACCS members addressing key aspects of the NPRM, but focused on GE and Certification proposal impacts.

What is AACCS's current position on GE?

- We **OPPOSE** the GE Debt-to-Earnings based on flawed earnings and lack of appeal. The proposal makes this problem worse, not better than the 2014 GE Rule.
- We **OPPOSE** the Earnings Threshold which is based solely on those flawed earnings. It is poorly supported, targeted, and arbitrary in result.
- We remain flexible on nuance and positioning, including around Financial Value Transparency proposal.



What Else is AACCS Doing?

- AACCS is leading Capitol Hill campaign to seek House and Senate Member comment submissions.
- AACCS has submitted a 30-day extension request to Secretary Cardona and is coordinating support for extension requests.
- AACCS is coordinating supplemental research projects to support AACCS comment submission.
- AACCS is coordinating with the broader sector to maximize messaging and impact.
- AACCS is doing outreach to other associations representing members impacted by the GE Rule.
- GE@beautyschools.org – Hotline for Help With Comment Questions/Suggestions



GE Comments – Overall Goals

- 1. Quality of Comments** – Fact and data based; tailored to your unique situation; not “form” comments.
- 2. Quantity of Comments** – We need to make noise. Put effort into quality, but don’t let perfection be the enemy - file by **June 20!**
- 3. Diversity of Comments** – All categories of impacted stakeholders should comment.



Top 6 Reasons Stakeholders Should File Comments

1. Our voice needs to be heard! The Department denied cosmetology schools a seat at the negotiating table.
2. This is our *last chance* to document in the rulemaking record the targeted, negative impact the GE rule will have on the beauty and wellness sector.
3. Comments serve to supplement the record with the perspective of *all* impacted constituencies in the beauty and wellness sector to show the vast economic impact of proposed rule.
4. Requesting comments from stakeholders educates our community about the need to unite and engage in opposing this rule.
5. Puts facts, local impact, economic impacts and opposition in the record to counter NPRM specific policy rationale and findings.
6. AACS cannot challenge any issue later in court not raised in public comment period.



Two Asks from AACCS Members Now

1. Identify Your **Community of Support**
2. Assist with **Comment Letters from Your Community of Support** by June 20



Identify Your Community of Support

- You and other AACCS School Owners
- Your graduates (licensed professionals) and the associations that support their profession.
- Your school employees and educators.
- Employers of your school's graduates.
- Allied businesses that do business with your school.
- Other community members that rely on your school in other ways: prison education programs, women and minority business initiatives, other.



Licensed Professional/Graduate Comments

- Key Theme: **VALUE** derived from program
 - **Economic Value Derived From Education**
 - Manageable debt, making payments, not in default
 - Skills learned in program left them better off than where they were after graduating from high school – prepared for state licensing exam to work in field
 - Estimate hourly earnings (NPRM concludes most cosmetology programs do not lead to more than \$12.50/hour jobs)
 - Ability to support themselves (and their family if they have dependents)
 - Only local pathway to training for licensed occupation for in-demand occupation
 - **Non-Economic Value Derived From Education**
 - Freedom to Choose
 - Ability to follow interest and passion
 - Access to program
 - Flexibility
 - Desire to keep path open for future professionals



Student Comments

- Key Theme: **VALUE** derived from program
 - **Economic**
 - Would not be able to gain skills for licensure without federal assistance
 - **Non-Economic**
 - Freedom to choose program of interest
 - Ability to follow interest and passion
 - Access to program - School chosen was only or one of few local options to career training in this field
 - Diversity and inclusion



School Owner Comments

- **Important Background**

- Location(s), Programs, Enrollment numbers
- How long school has operated, number of graduates historically
- Student body: demographics (female, diversity), Pell eligible
- Owner diversity: female and/or minority
- Graduation rates, including as compared to local schools
- Placement rates
- Employer relationships
- Lack of availability of similar programs at public or NFP institutions in region



School Owner Comments

- **Economic Consequences of GE Rule Expected: This is Existential – I Will Lose My Business**
 - Program closures
 - School closures
 - Layoffs/job loss
 - Federal, State and local tax revenue loss
- **Key Program Strengths To Communicate – the NPRM is Wrong Regarding Cosmetology Programs**
 - Low median debt
 - Low cohort default rates
 - Alternate earnings data – former appeals data, employer data, surveys, etc. –
 - GE fails programs leading to hourly rate of \$12.50/hour or less – show our graduates earn more
 - Graduates work flexible schedules (see Graduate comment slide)



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Employer Comments

- **Economic Consequences of GE Rule Expected**
 - Inability to fill jobs
 - Inability to expand
 - Federal, State and local tax revenue loss
- **Key Strengths To Communicate**
 - Graduate hires earn far more than \$12.50/hour (GE fails programs leading to hourly rate of \$12.50/hour or less)
 - Career trajectory, earnings trajectory
 - Alternate earnings data – employer data, surveys, etc.
 - Graduate employees work flexible schedules (see Graduate comment slide)
 - Build on and cite Qnity Study



Allied Business Comments

- **Basics: Location(s), #Employees, How You Serve AACS Members**
- **Economic Consequences on Allied Business Expected From GE Rule**
 - **Loss of client base**
 - **Loss of revenue**
 - **Inability to expand**
 - **Federal, State and local tax revenue loss**
- **Key Strengths To Communicate**
 - **Commitment to beauty and wellness industry**
 - **History in beauty and wellness industry**
 - **Partnerships and initiatives with AACS members that serve student interest – ie, diversity and inclusion initiatives, curriculum reform, etc.**



Next Steps

- June 7, 2023: Third AACCS webinar
- June 14, 2023: Fourth AACCS webinar
- June 20, 2023: **Public Comment Deadline**

Help Line! – GE@beautyschools.org

